(1)

CF 100/-

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR:C.G.

W.P.no. 3215 **/2003**

PETITIONER :
(plaintiff)

P. Champalal, aged 45 yrs., s/o Shri Jethmal Prajapati, r/o New Shanti nagar, Raipur,C.G.

V E R S U S.

RESPONDENT :
(No.1 is defendant)

1. Keshav, aged 74 yrs., s/o Shri Govind Chitnis, r/o near Sindhu Bhawan, Sector-2, Devendra nagar, Raipur, C.G.
2. Ninth Civil Judge Class 2, Raipur,C.G.
3. Fourth Additional District Judge, Raipur,C.G.
4. The State of Chhattisgarh, through Secretary to the Department of Home Affairs, D.K.Singh Bhawan Secretariate, Raipur,C.G.
5. The Superintendent of police, Raipur.
6. The Station House Officer, Police Station, Civil lines, Raipur,C.G.

P. R. No. 3099/03
Presented by Shri B.P. Singer
dated 02.10.03

WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTIN OF INDIA FOR ISSUE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/ CERTIORARAI/ PROHIBITION OR DIRECTIVE /ORDERS IN THE LIKE NATURE ETC.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक W.P. 3215 सन् 2003

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

13.04.2005: -

Shri Bhishma Kinger, learned counsel for the petitioner.
Shri Vaibhav Mishra, learned counsel for respondent No. 1.
Shri R.R.Sinha, learned P.L. for the State/respondents 4 to 6.

Heard on admission.

The petitioner has filed this petition under Article 226 and 227 of the Constitution of India for issuance of writ of certiorari for setting aside the order dated 18.06.2003 and 19.07.2003 passed by the 9th Civil Judge, Class-II, Raipur in Civil Suit No. 19-A/2003 and 4th Additional District Judge, Raipur in Misc. Civil Appeal No. 36/2003 and whereby the application for temporary injunction preferred by the plaintiff/petitioner has been rejected by both the Courts below.

The case of the petitioner is that the petitioner filed a civil suit under Section 6 of the Specific Relief Act for delivery of possession and perpetual injunction on the ground that on the basis of some oral agreement the suit land was purchased by him from the respondents in the year 1998 and on the basis of the said transaction, the petitioner was put in possession of the suit property. It was also submitted by the petitioner that a sum of Rs. 4,15,000/- towards the above transaction has already been paid by him to the respondents and he was in possession of the suit property till 04.05.2003 when he was dispossessed by the respondent No. 1 with the assistance of police and against this illegal dispossession, the above suit has been filed.

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

48

आदेश पत्रक

मामला क्रमांक ...W.P. 3215... सन् 2003

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The respondents in their written statement denied the averments of the plaint as also the averments made in the application for temporary injunction.

The petitioner had moved an application for temporary injunction whereby it was prayed that till the disposal of the suit, the defendant should be restrained from executing the sale deed of the suit property to any other person. Learned Civil Judge vide order dated 18.06.2003 dismissed the application for temporary injunction by recording a finding that the plaintiff has no prima facie case and he is also not in possession of the suit property and as such balance of convenience is not in favour of the plaintiff and on the contrary if some ~~arbitrary~~ prohibitory order is passed against the defendant, irreparable injury shall be caused to the defendant. The appeal was preferred by the plaintiff against the order of the learned Civil Judge and the learned A.D.J. also dismissed the appeal by the impugned order.

Learned counsel for the petitioner submits that he has filed a suit for restoration of possession under Section 6 of the Specific Relief Act and in case the respondents alienate the property and transfer the possession of the same to some 3rd person, multiplicity of the proceedings will arise and in the above circumstances, the Courts below ought to have allowed the application for temporary injunction and ought to have restrained the defendant from alienating the property or effecting 3rd party interest.

I have heard learned counsel for the petitioner as also for the respondents.

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. 3215 सन् 2003

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

From perusal of the plaint and the relief claimed therein, it appears that the petitioner has claimed a decree of possession of the suit land and further perpetual injunction against the respondents from alienating the suit property. However, the petitioner has not claimed any title over the suit land by the instant petition. It is admitted by the petitioner that the defendant No. 1 is the owner of the suit property. It is also not disputed by the petitioner that at present the respondents are in possession of the suit property.

In the light of the above factual ~~matter~~ matrix, the order passed by both the Courts below rejecting the application for temporary injunction preferred by the petitioner cannot be held to be an order that has been passed without jurisdiction or in excess of the jurisdiction or that the jurisdiction has been exercised in such a manner which is not permissible by the law and because of exercise of such jurisdiction failure of justice or grave injustice has occasioned to the petitioner. Therefore, I am of the opinion that it is not a fit case which warrants exercise of supervisory jurisdiction under Article 227 of the Constitution of India and in view of the above, the instant petition is devoid of merit and the same deserves to be dismissed and it is dismissed accordingly.

Sd/-
Dhirendra Mishra
Judge

(पीछे देखिये)